

1 [Planning, Building, Administrative, and Subdivision Codes - Legalization of Dwelling Units
2 Installed Without a Permit]

3 **Ordinance amending the Planning and Building Codes to provide a process for**
4 **granting legal status to existing dwelling units constructed without the required**
5 **permits, temporarily suspending the code enforcement process for units in the process**
6 **of receiving legal status, and prohibiting units from being legalized under the**
7 **provisions of this Ordinance if there have been no-fault evictions; amending the**
8 **Administrative Code to prohibit the costs of legalization from being passed through to**
9 **the tenant; amending the Subdivision Code to prohibit legalized units from being**
10 **subdivided and separately sold; affirming the Planning Department's California**
11 **Environmental Quality Act determination, making findings of consistency with the**
12 **General Plan, and the eight priority policies of Planning Code, Section 101.1; and**
13 **directing the Clerk of the Board of Supervisors to submit this Ordinance to the**
14 **California Department of Housing and Community Development in accordance with**
15 **California Government Code, Section 65852.2(h).**

16 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
17 **Additions to Codes** are in *single-underline italics Times New Roman font*.
18 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
19 **Board amendment additions** are in double-underlined Arial font.
20 **Board amendment deletions** are in ~~strikethrough Arial font~~.
21 **Asterisks (* * * *)** indicate the omission of unchanged Code
22 subsections or parts of tables.

21 Be it ordained by the People of the City and County of San Francisco:

22 Section 1. General and Environmental Findings.

23 (a) This ordinance is adopted under the California Second Unit Law (Government Code
24 Section 65852.2).

1 (b) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). The Board of Supervisors hereby affirms this determination.
4 Said determination is on file with the Clerk of the Board of Supervisors in File No. _____
5 and is incorporated herein by reference

6 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these
7 Planning Code amendments will serve the public necessity, convenience, and welfare for the
8 reasons set forth in this ordinance and in Planning Commission Resolution No. _____. A
9 copy of Planning Commission Resolution No. _____ is on file with the Clerk of the Board of
10 Supervisors in File No. _____ and is incorporated herein by reference.

11 (d) On _____, in Resolution No. _____, the Planning Commission
12 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
13 with the City's General Plan and the eight priority policies of Planning Code Section 101.1.
14 The Board of Supervisors adopts these findings as its own.
15

16 Section 2. The Planning Code is hereby amended by adding Section 207.3, to read as
17 follows:

18 **SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A PERMIT**
19 **IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.**

20 *Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling units that*
21 *were constructed without benefit of permit in an existing residential building or in an ancillary*
22 *structure located on the same lot may be granted legal status subject to the conditions and procedures*
23 *set forth below. For purposes of this Section 207.3, a dwelling unit shall not include single room*
24 *occupancy units.*

25 **(a) Purpose and Findings.**

1 (1) In California Government Code Section 65852.150, the Legislature declared that
2 second units are a valuable form of housing in California because they “provide housing for family
3 members, students, the elderly, in-home health care providers, the disabled, and others, at below
4 market prices within existing neighborhoods” and that “homeowners who create second units benefit
5 from added income, and an increased sense of security.”

6 (2) San Francisco has long had a housing shortage, especially of affordable housing.
7 The housing market continues to be tight and housing costs are beyond the reach of many households.
8 Policy 1.5 of the City’s 2009 Housing Element states that secondary units in existing residential
9 buildings represents a simple and cost-effective method of expanding the City’s housing supply.

10 (3) The City has no definitive information on the number of dwelling units that have
11 been added to existing residential buildings without the benefit of a permit, but unofficial estimates
12 indicate that as many as 30,000 to 40,000 such dwelling units exist as of 2013. Often these illegal units
13 have been built in the basements, garages, and attics of existing buildings or in rear-yard structures.
14 While many of these units may not meet existing Planning Code requirements, they constitute a major
15 supply of San Francisco’s affordable housing units, often meet life and safety standards, and may
16 require only exceptions from density, open space, and other Planning Code requirements in order to
17 become legal.

18 (4) Providing a mechanism to grant legal status to an illegally constructed dwelling
19 unit in an existing building zoned for residential use furthers several public policy objectives. By
20 encouraging the legalization of these units, the City can add legitimate units to the City’s supply of
21 affordable housing, ensure that these units are safe and habitable, and properly include these units
22 when calculating the City’s existing housing supply.

23 **(b) Scope.**

24 (1) Except as provided in subsection (2) below, this Section 207.3 shall apply to an
25 existing building or an ancillary structure on the same lot, that is located in a district where residential

1 use is principally permitted, and that has one or more dwelling units that were constructed prior to
2 January 1, 2013 without benefit of permit and used as residential space. One of the unauthorized
3 dwelling units per lot meeting this threshold requirement may be granted legal status under this
4 Section, regardless of the density limits of the zoning district.

5 (2) **No-fault eviction.** The Department shall not approve an application for legalization
6 if any tenant has been evicted from the unit pursuant to Administrative Code Sections 37.9(a)(9)
7 through (a)(14) where the tenant was served with the notice of eviction after March 13, 2014 if the
8 notice was served within ten (10) years prior to filing the application for legalization. Additionally, the
9 Department shall not approve an application for legalization of the unit if any tenant has been evicted
10 pursuant to Administrative Code Section 37.9(a)(8) where the tenant was served with a notice of
11 eviction after March 13, 2014 if the notice was served within five (5) years prior to filing the
12 application for legalization. The Department shall verify with the Rent Board that no no-fault eviction
13 had been filed. This subsection (b)(2) shall not apply if the tenant was evicted under Administrative
14 Code Section 37.9(a)(11) and the applicant(s) have either: (A) certified that the original tenant
15 reoccupied the unit after the temporary eviction or (B) submitted to the Department a declaration from
16 the property owner or the tenant certifying that the property owner or the Rent Board has notified the
17 tenant of the tenant's right to reoccupy the unit after the temporary eviction and the tenant chose not to
18 reoccupy it.

19 (c) **Notices of Violation.** If the Director or Zoning Administrator has issued a notice of
20 violation for the unauthorized unit for which legalization is being sought and all violations would be
21 corrected by legalization of the unit, the Director or Zoning Administrator shall:

22 (1) temporarily suspend the notice of violation and enforcement action upon initiation
23 of the legalization process by the owner or owner's authorized agent and acceptance of the required
24 applications by the City; and

1 (2) rescind the notice of violation and remove any related liens on the property if
2 legalization of the unit is approved within one year of initiation of the process set forth in subsection
3 (d).

4 (d) **Legalization Application.** The Department shall approve an application to legalize an
5 existing dwelling unit if the unit complies with Planning Code requirements as specified in subsection
6 (e) below and with other City codes as specified in subsection (f) below, if the Rent Board verifies that
7 no no-fault eviction was filed pursuant to subsection (b)(2) above, and if the permit application is
8 completed at and plans approved by the Department of Building Inspection. In compliance with the
9 State’s Second Unit Law (California Government Code 65852.2), the Department shall exercise
10 ministerial approval of the application if the dwelling unit is in a single-family home and thus within
11 the scope of the State’s Second Unit Law.

12 **(e) Compliance with Planning Code Requirements; Exceptions.**

13 (1) A dwelling unit authorized under this Section 207.3 must satisfy all applicable
14 requirements of this Code except for the usable open space requirements set forth in Section 135 and
15 the light and air requirements set forth in Section 140, and except as otherwise provided in this Section
16 207.3.

17 (2) A dwelling unit in an ancillary structure on the same lot as the single-family or
18 multi-family building shall not require a variance from the rear yard requirements of Section 134 in
19 order to be granted legal status under this Section 207.3.

20 (3) One such dwelling unit on the lot is allowed to exceed the permitted density
21 authorized for that zoning district provided that a residential use is principally permitted in that zoning
22 district. Authorization of an additional unit over the density limits will not change the official zoning
23 classification of the lot; provided, however, that the additional dwelling unit shall count towards the
24 density limits if the parcel is under its density limit capacity.

1 (4) The reduction of parking requirements shall be permitted without requiring
2 compliance with Section 161(j) of this Code.

3 (f) **Compliance With Other City Codes.** A dwelling unit authorized under this Section 207.3
4 must meet all applicable provisions of other City codes other than the provisions of the Planning Code
5 cited in subsection (e). Any Code equivalencies authorized under the Building Code, Electrical Code,
6 Plumbing Code, Mechanical Code, Fire Code, or other applicable Code shall be considered by the
7 relevant agency.

8 Legalization of a dwelling unit under this Section 207.3 shall not affect whether the dwelling
9 unit is subject to the Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the
10 Administrative Code). A dwelling unit that was subject to the Residential Rent Stabilization and
11 Arbitration Ordinance prior to legalization under this Section 207.3 shall remain subject to the
12 Residential Rent Stabilization and Arbitration Ordinance after legalization. Landlords shall pay
13 relocation assistance to tenants who are temporarily displaced due to work required for dwelling unit
14 legalization pursuant to the provisions in Section 37.9C of the Residential Rent Stabilization and
15 Arbitration Ordinance or California Civil Code Section 1947.9 for displacements of less than 20 days.

16 (g) **Additional Dwelling Unit Considered a Lawful Nonconforming Use.** Any dwelling unit
17 authorized under this Section 207.3 shall be considered a lawful nonconforming use subject to the
18 provisions of Planning Code Sections 180 through 189; provided, however, that expansion of the
19 additional dwelling unit within the building envelope shall be permitted as part of the legalization
20 process.

21 (h) **Subdivision and Lot Splits Prohibited.** Notwithstanding the provisions of Article 9 of the
22 Subdivision Code, a lot with an additional unit authorized under this Section 207.3 may not be
23 subdivided in a manner that would allow for the additional unit to be sold or separately financed
24 pursuant to any condominium plan, housing cooperative, or similar form of separate ownership.

1 (i) **Merging Secondary and Original Units.** If the property owner wants to merge the
2 secondary and original units, the owner may request merger pursuant to Section 317 of this Code. If
3 the Planning Department or Commission approves the merger, the secondary unit will be removed
4 from the Planning Department’s Master List and the Assessor-Recorder’s records after the final
5 certificate of occupancy is obtained and the merger has occurred.

6 (j) **Reports.** Six months from the effective date of this Section 207.3 and every six months for
7 the first three years after the effective date, the Zoning Administrator and the Director of the
8 Department of Building Inspection shall issue a joint report on the effectiveness of the additional
9 dwelling unit authorization program. After three years, the report will be included in the City’s Annual
10 Housing Inventory. The report shall, at a minimum, state the number of screening forms and building
11 permit applications that have been filed pursuant to this Section 207.3. For the first three years, copies
12 of these reports shall be submitted to the Clerk of the Board of Supervisors, the Mayor, and the
13 Controller.

14 (k) **Master List of Additional Dwelling Units Approved.** The Planning Department shall
15 create and maintain a master list of dwelling units approved pursuant to the provisions of this Section
16 207.3 and corresponding property addresses for use by the San Francisco Rent Stabilization and
17 Arbitration Board, Tax Assessor, and other interested City departments, boards or commissions.

18
19 Section 3. The Planning Code is hereby amended by revising Section 311, to reach as
20 follows:

21 **SEC. 311. RESIDENTIAL PERMIT REVIEW PROCEDURES FOR RH, RM, AND RTO**
22 **DISTRICTS.**

23 * * * *

24 (b) **Applicability.** Except as indicated herein, all building permit applications for
25 demolition and/or new construction, and/or alteration of residential buildings in RH, RM, and

1 RTO Districts shall be subject to the notification and review procedures required by this
2 Section. Subsection 311(e) regarding demolition permits and approval of replacement
3 structures shall apply to all R Districts.

4 (1) For the purposes of this Section, an alteration in RH and RM Districts shall be
5 defined as any change in use ~~or change in the number of dwelling units of a residential building,~~
6 removal of more than 75 percent of a residential building's existing interior wall framing or the
7 removal of more than 75 percent of the area of the existing framing, or an increase to the
8 exterior dimensions of a residential building except those features listed in Section 136(c)(1)
9 through 136(c)(24) and 136(c)(26).

10 (2) For the purposes of this Section, an alteration in RTO Districts shall be defined as a
11 change of use described in Section 312(c) ~~or a change in the number of dwelling units of a~~
12 ~~building,~~ removal of more than 75 percent of a building's existing interior wall framing or the
13 removal of more than 75 percent of the existing framing, or an increase to the exterior
14 dimensions of a building except for those features listed in Section 136(c)(1) through
15 136(c)(24) and 136(c)(26).

16 * * * *

17 Section 4. The Building Code is hereby amended by adding Section 106A.3.1.3, to
18 read as follows:

19 **106A.3.1.3. Authorization of Dwelling Units Installed Without a Permit.**

20 (a) Screening required. Prior to filing a permit application to legalize an existing unauthorized
21 dwelling unit under Section 207.3 of the Planning Code, the owner of the building or the owner's
22 authorized agent shall submit the following information to the Department for the purpose of
23 determining whether the unauthorized dwelling unit can comply with the requirements of this Code or
24 other codes administered and enforced by the Department, or whether equivalencies from Code
25 requirements can be obtained:

1 (1) a Dwelling Unit Legalization Checklist form, created by the Department, together
2 with floor plans for the entire building and a plan showing the location of all structures on the subject
3 lot;

4 (2) evidence from the San Francisco Water Department, telephone, gas or electric
5 records, written lease agreements, or other evidence acceptable to the Department showing that the
6 dwelling unit for which approval is sought existed prior to January 1, 2013;

7 (3) an assessment prepared by a licensed contractor, architect, or engineer that outlines
8 a plan to comply with all applicable requirements of the Building Code and other Codes administered
9 and enforced by the Department; and

10 (4) other information as the Building Official shall require.

11 (b) **Imminent and Substantial Hazard.** If the Department identifies an imminent and
12 substantial hazard as described in Section 102A.16 of this Code during the screening process, the
13 Department shall inform the applicant of the appropriate remedial actions and notifications to tenants.

14 (c) **Application Process; Required Permit(s).** After completion of the screening process
15 required by subsection (a.) a property owner or the owner's authorized agent may file applications
16 with the Department, Fire Department, or other City department for any building or other permits that
17 are require in order to legalize one existing unauthorized dwelling unit on the property. The
18 application(s) shall refer explicitly to this Section 106A.3.1.3 and Section 207.3 of the Planning Code.
19 If there is more than one existing unauthorized unit on the site, the owner or agent shall designate the
20 unauthorized unit for which legalization is sought. The approval, issuance, expiration, or cancellation
21 of an application filed pursuant to this Section 106A.3.1.3 and any resulting permits shall be in
22 accordance with the provisions of all City codes, except as provided below. Cancellation or
23 disapproval of the application or any resulting permit shall terminate all rights under this Section
24 created by the application. A dwelling unit is not lawful unless and until all necessary approvals have
25 been obtained.

1 (d) Notices of Violation. If the Department has issued a notice of violation for the unauthorized
2 unit for which legalization is being sought and all violations would be corrected by legalization of the
3 unit, the Director shall:

4 (1) temporarily suspend the notice of violation and enforcement action upon initiation
5 of the process set forth in subsection (a) by the owner or owner's authorized agent and acceptance of
6 the required applications by the City; and

7 (2) rescind the notice of violation and remove any related liens on the property if
8 legalization of the unit is approved within one year of initiation of the process set forth in subsection
9 (a).

10 (e) Funding Resources Information. The Department shall provide information about the
11 Mayor's Office of Housing and Community Development Code Enforcement Rehabilitation Fund and
12 other potential funding sources that may be available for code compliance.

13
14 Section 5. The Administrative Code is hereby amended by revising 37.7, to read as
15 follows:

16 **SEC. 37.7. CERTIFICATION OF RENT INCREASES FOR CAPITAL IMPROVEMENTS,**
17 **REHABILITATION WORK, ENERGY CONSERVATION IMPROVEMENTS, AND**
18 **RENEWABLE ENERGY IMPROVEMENTS.**

19 (a) **Authority.** In accordance with such guidelines as the Board shall establish, the
20 Board and designated Administrative Law Judges shall have the authority to conduct hearings
21 in order to certify rental increases to the extent necessary to amortize the cost of capital
22 improvements, rehabilitations, energy conservation improvements, and renewable energy
23 improvements. Costs determined to be attributable to such work and improvements shall be
24 amortized over a period which is fair and reasonable for the type and the extent of the work
25 and improvements, and which will provide an incentive to landlords to maintain, improve and

1 renovate their properties while at the same time protecting tenants from excessive rent
2 increases. Costs attributable to routine repair and maintenance, or any costs attributable to
3 legalizing an existing dwelling unit under Section 207.3 of the Planning Code, shall not be certified.

4 * * * *

5 Section 6. The Subdivision Code is hereby amended by revising Section 1359 and
6 adding Section 1380.1, to read as follows:

7 **SEC. 1359. PARCEL MAP.**

8 (a) The requirements of Subsection (c) of Section 1356 of this Code shall apply to
9 Parcel Maps.

10 * * * *

11 (c) In the case of Conversions where a Tentative Map is not required, the
12 requirements of Section 1314 and the requirements of Article 9 on Conversions shall apply,
13 provided that hearings as provided in Sections 1313 and 1332 shall not be required, and
14 provided further that Article 9 shall not be applied to two-unit buildings where both units are
15 owner-occupied for one year prior to the application for Conversion. This exemption for owner-
16 occupied two unit buildings shall not apply to units legalized pursuant to Section 207.3 of the Planning
17 Code.

18 * * * *

19 **SEC. 1380.1. UNITS LEGALIZED PURSUANT TO PLANNING CODE SECTION 207.3.**

20 Notwithstanding any other provisions of this Code, a dwelling unit constructed without benefit
21 of permit and legalized pursuant to the provisions of Section 207.3 of the Planning Code may not be
22 subdivided in a manner that would allow for the unit to be sold or separately financed pursuant to any
23 condominium plan, housing cooperative, or similar form of separate ownership.

1 Section 7. Equivalencies. The Director of the Department of Building Inspection and the
2 Fire Marshal shall determine whether equivalencies from the provisions of the San Francisco
3 Building Code can be developed in order to facilitate authorization of existing dwelling units
4 under Planning Code Section 207.3, shall prepare one or more Administrative Bulletins to
5 define and implement the code equivalencies, and shall coordinate with the Zoning
6 Administrator in the development of any joint Administrative Bulletins that the Planning and
7 Building Departments determine are necessary or desirable in order to implement the policy
8 and provisions of this ordinance. Any Administrative Bulletins developed jointly or by either
9 Department shall be completed within one year of the effective date of this ordinance.
10

11 Section 8. Notice. Within one month from the effective date of this ordinance, the Clerk
12 of the Board of Supervisors shall cause to be published at least once in a newspaper of
13 general circulation notice that the program for authorization of existing dwelling units under
14 Planning Code Section 207.3 is in effect. The Tax Collector shall mail notice to property
15 owners with the first property tax bill sent after the effective date of this ordinance. The notices
16 by the Clerk of the Board and the Tax Collector shall advise property owners of the provisions
17 of Section 207.3. The Zoning Administrator and the Director of the Department of Building
18 Inspection shall supplement the aforementioned notices with any additional notice they deem
19 necessary to insure that the public receives adequate notice of the provisions of said Section
20 207.3.
21

22 Section 9. Effective Date. This ordinance shall become effective 30 days after
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
25 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 10. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

7
8 Section 11. Severability. If any section, subsection, sentence, clause, phrase, or word
9 of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any
10 court of competent jurisdiction, such decision shall not affect the validity of the remaining
11 portions of the ordinance. The Board of Supervisors hereby declares that it would have
12 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
13 word not declared invalid or unconstitutional without regard to whether any other portion of
14 this ordinance would be subsequently declared invalid or unconstitutional.

15
16 Section 12. Conflict with Federal or State Law. Nothing in this ordinance shall be
17 interpreted or applied so as to create any requirement, power, or duty in conflict with any
18 federal or state law.

19
20 Section 13. Directions to Clerk. The Clerk of the Board of Supervisors is hereby
21 directed to submit a copy of this ordinance to the California Department of Housing and
22
23
24
25

1 Community Development within 60 days following adoption pursuant to Section 65852.2(h) of
2 the California Government Code.

3

4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 JUDITH A. BOYAJIAN
8 Deputy City Attorney

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